

P.E.R.C. NO. 94-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STRATFORD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-25

STRATFORD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Stratford Education Association against the Stratford Board of Education to the extent the Association claims that employees who do not enroll their dependents or who terminate the enrollment of their dependents in the State Health Benefits Plan are contractually entitled to coverage under an income protection plan.

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Appearances:

For the Petitioner, Capehart & Scatchard, P.A., attorneys
(Alan R. Schmoll, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On September 15, 1993, the Stratford Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Stratford Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it discontinued an income protection plan.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's teachers, custodians, secretaries, aides, and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1990 until June 30, 1993. Article XIII is entitled

Insurance Protection. Sections A and B provide:

A. The Board shall provide to each certified teaching staff member, custodian, nurse, secretary, bus drivers, health care insurance protection or an income protection plan pursuant to the terms and conditions of the master policy of insurance. The employee shall choose one of the following plans:

1. Blue Cross/Blue Shield/Rider "J"/Major Medical Coverage for the employee and dependents through the New Jersey Public and School Employees Health Benefit Plan. Aides shall only receive single health benefits through the New Jersey Public and School Employees Health Benefit Plan and none of the benefits set forth in paragraphs A.2, C, and D. of this Article.

2. Income protection plan for the individual employee through Washington National Insurance Company Protection Plan and health insurance coverage for the employee only. A teacher requesting this protection agrees to adhere to the conditions of participation in the program as stipulated by the Washington National Company.

B. The Board shall pay the full premiums for the coverage outlined in paragraph A.1 above or not more than the equivalent dollar amount for the protection outlined in paragraph A.2 above for the 1990-91, 1991-92 and 1992-93 school years.

N.J.A.C. 17:9-1.8 provides that "an employer shall not offer a financial enticement of cash or anything else of value to an employee who elects not to enroll or to terminate enrollment in the State Health Benefits Program." Relying on this regulation, the Board informed the Association that it would discontinue the insurance protection alternative specified by Section A.2.

The Association filed a grievance which the Board denied. The Association then demanded binding arbitration. This petition ensued.

After filing this petition, the Board received a letter from the Chief of the State Health Benefits Program ("SHBP"). That letter, written in response to the Board's inquiry and without the Association's input, stated that Section A.2 violated N.J.A.C. 17:9-1.8.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Board may have. We also decline to address the Association's contention, opposed by the Board, that Article XIII requires all employees to participate in the SHBP and does not permit employees to opt out of the SHBP for their individual coverage.

The availability of health insurance is a term and condition of employment, but negotiations or arbitration over a form

of health insurance may be preempted if a statute or regulation specifically, expressly, and comprehensively establishes that employment condition and eliminates the employer's discretion to vary it. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 330 (1989); Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). In resolving preemption issues, we have the power and the duty to interpret statutes besides our own. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311 (1979). Thus, we may construe SHBP statutes and regulations and have done so in other cases. See, e.g., Tenafly Bd. of Ed, P.E.R.C. No. 93-83, 19 NJPER 210 (¶24100 1993); Hudson Cty., P.E.R.C. No. 92-56, 18 NJPER 37 (¶23012 1991); City of Passaic, P.E.R.C. No. 92-23, 17 NJPER 422 (¶22203 1991); Hudson Cty., P.E.R.C. No. 91-36, 16 NJPER 544 (¶21245 1990). We may also consider the letter from the SHBP Chief as one factor in our analysis, although we do not believe it is definitive because it is not a formal opinion and the Association was not given an opportunity to make its views known before it was issued. We deny the Association's request that a hearing be held at which the Chief can be cross-examined on the legal issue of whether and how N.J.A.C. 17:19-1.8 applies to Section A.2 of Article XIII.

The Board asserts that N.J.A.C. 17:19-1.8 prohibits offering an income protection plan to employees who opt not to enroll their dependents in the SHBP and that Section A.2 makes such an illegal offer. It relies on the SHBP Chief's opinion to support

that assertion. The Association responds that N.J.A.C. 17:9-1.8 speaks only of employees, not dependents, and that Section A.2 legally offers employees with dependents the option of choosing income protection coverage for themselves rather than dependent coverage under the SHBP.

We agree with the Board's reading of N.J.A.C. 17:9-1.8. That regulation proscribes offering employees a financial enticement to opt out of the SHBP -- that proscription is violated whether the employees opt to take themselves out of the program or whether they opt to take their dependents out. In other words, since it is illegal to offer an income protection plan to employees who do not enroll or terminate enrollment in the SHBP, it is also illegal to offer an income protection plan to employees who do not enroll or terminate the enrollment of their dependents in the SHBP. We will accordingly restrain arbitration to the extent the Association claims that employees who do not enroll their dependents or who terminate the enrollment of their dependents in the SHBP are contractually entitled to coverage under the income protection plan as called for by Section A.2, Article XIII.

ORDER

The request of the Stratford Board of Education for a restraint of binding arbitration is granted to the extent the Association claims that employees who do not enroll their dependents

or who terminate the enrollment of their dependents in the SHBP are contractually entitled to coverage under the income protection plan called for by Section A.2 of Article XIII.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993